IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15436 of 2004

Between:

M/s Sri Dhana Lakshmi Oil Company, Rep. by its Managing Partner,
P.V.Prasada Raju S/o Late Ramachandra Raju, aged 41 years, R/o Akividu, W.G. District.

..... PETITIONER

AND

1 Union of India, rep. by its Secretary, Ministry of Petroleum and Natural Gas of India, New Delhi.
2 The Secretary, Ministry of Road Transport and Highways, Transport

Bhavan-1, Parliament Street, New Delhi.
3 The Chief Secretary (P.W.D) (Roads), Govt. of A.P. Secretariat, Hyderabad.
4 The Chief Engineer (N.H), Erramanzil, Hyderabad.
5 The Superintending Engineer, N.H. Vijayanagaram, Vijayanagaram District.
6 The Executive Engineer, (R&B), N.H. Kakinada, East Godavari District.
7 The District Collector, West Godavari District, Collectorate, Eluru.
8 The General Manager, Reliance India Ltd, (Petroleum Business), 201, Lakshmi Towers, 2nd Floor, Rajbhavan Road Somajiguda,

Hyderabad-82.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus declaring NOC (No Objection Certificate) given by the respondent No.3 to 7 to the 8th respondent as illegal, arbitrary and unenforceable and consequently direct the 8th respondent to forbear from proceeding further to construct and commission of retail out let near by petitioner Petrol bunk in R.S.No. 320/12 & 320/13 at Akividu, West Godavari District.

Counsel for the Petitioner : MR. C.V.NAGARJUNA REDDY

Counsel for the Respondents : MR. A.RAJASHEKAR REDDY (SC FOR Central Government)

The Court made the following :

THE HONOURABLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.15436 OF 2004

ORDER:

This Writ Petition is filed seeking a declaration that the No Objection Certificate (NOC) granted by the respondents 3 to 7 in favour of the 8th respondent for the purpose of construction of retail outlet in R.S.No.320/12 and 320/13 of Akividu, West Godavari District, as arbitrary and illegal.

The petitioner is a partnership Firm, carrying on the business in sale of petroleum products as a dealer of Hindustan Petroleum Corporation. The retail outlet of the petitioner is situated at Akividu, West Godavari District along the National Highway No.214, running between Bhimavaram-Gudivada road. It is alleged that during the second week of February, 2004, the respondents 3 to 7 accorded No Objection Certificate to the 8th respondent company to set up a new fuel station within 50 metres from the petitioner's filling station. The petitioner states that since the location of the petrol bunk proposed to be set up by the 8th respondent, is not in conformity with the Instructions and Norms issued by the Union

of India under Circular dated 17.10.2003, several representations have been made including the legal notice dated 17.08.2004 bringing to the notice of the respondents 3 to 7 about the violation of the Norms. But, they failed to take any steps, and in the meanwhile the8th respondent is proceeding with the construction of the retail outlet on the site in question. Hence this writ petition.

The petitioner states that with regard to the procedure for installation of Petrol/Diesel/Gas retail outlets/service stations along the National Highways, specific guide lines were issued by the Government of India, Ministry of Surface Transport Department of Road Transport and Highways (Road Wings) under Circular dated 31.08.2000, according to which, the clear distance between two adjacent retail outlets should not be less than 300 metres. The said Norms fixed under Circular dated 31.08.2000 were further rationalized by the Government of India vide Circular dated 17.10.2003, and as per Clause 5 of the said Circular, it is the responsibility of the owner/oil company to comply with the Norms prescribed under the Circular Dated 31.08.2000 and failure to comply with the said Norms would entitle rejection of the proposal. The Government of Andhra Pradesh also issued Instructions dated 15.11.2003 to the Chief Engineer (NH), Hyderabad and also issued a Memo dated 25.11.2003 to all the Executive Engineers, R & B Department, dealing with the National Highways, enclosing the Circular of the Central Government dated 17.10.2003 with instructions to follow the same and to take necessary action in accordance with the said Circular. In the light of the said circulars and instructions issued by the Union of India as well as the State Government, the petitioner contends that the action of the respondents 3 to 7 in granting No Objection Certificate to the 8th respondent, within 50 metres from the filling station of the petitioner, is arbitrary and illegal and unenforceable.

On behalf of the 2nd respondent-Ministry of Road Transport and Highways, New Delhi, a counter-affidavit has been filed stating that No Objection Certificate, for setting up of new retail outlet by the 8th respondent, has not been issued so far. It is further stated that as per the procedure prescribed for obtaining permission of the Ministry, the concerned oil companies seeking permission for getting access to new retail outlets will have to apply to the State R & B Department and after scrutiny of the said proposal, in terms of the Circular dated 17.10.2003, the Chief Engineer (N.H) R & B Department will forward the proposal to the Regional Officer, Ministry of

Road Transport and Highways, Hyderabad, who in turn, after being satisfied that the criteria laid down by the Ministry is satisfied, will forward the proposal to the Ministry of Road Transport and Highways, New Delhi for approval and signing of the agreement. After signing of the agreement, fuel station of any company shall be permitted to energize. Thus, it is pleaded that since no permission for the subject matter of the outlet is given and no agreement is signed between the Ministry of Road Transport and Highways and the 8th respondent, the writ petition is liable to be dismissed.

In the counter-affidavit filed by the 6th respondent-the Executive Engineer, R & B, N.H., Kakinada, it is stated that the proposal submitted by the 8th respondent has been forwarded to the Chief Engineer, N.H., Hyderabad vide letter dated 17.02.2004 along with check list, required drawings for consideration and taking further necessary action, and that the No Objection Certificate has not been received from the Ministry of Road Transport and Highways so far. However, it is stated that the proposed retail outlet satisfies the Norms prescribed by the Ministry of Road Transport and Highways and issue of No Objection Certificate is under consideration strictly as per the Norms and therefore, the objection raised by the petitioner is untenable.

On behalf of the 8th respondent also, a separate counter affidavit has been filed denying the allegations made by the petitioner that the location at which the 8th respondent proposed to put up its retail outlet is hit by the distance Norm as envisaged in the Circular dated 17.10.2003 issued by the Government of India. It is further stated that clause 4.4.3 of the Norms clearly provides for setting up of two or more fuel stations in close proximity under the circumstances specified thereunder and therefore there is no absolute bar as such as contended by the petitioner for setting up the new retail outset within the distance of 300 metres. It is further stated that the petitioner who is a rival trader has no *locus standi* to file the writ petition since none of its personal or statutory rights is affected by the grant of No Objection Certificate to the 8th respondent.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner while drawing the attention of this Court to clause 3.1 of the Annexure-I to Circular dated 31.08.2000 and Clause 6.2 of the Circular dated 17.10.2003, and clause 4.4 of Appendix-I to Circular dated 17-10-2003 vehemently contended that it is mandatory to maintain the minimum distance of 300 metres between two fuel stations along the National Highway.

As can be seen from the counter affidavits filed by the respondents 2 and 6, No Objection Certificate has not yet been granted by the competent authority, and the proposal made by the 8th respondent is still under consideration. The respondents 2 and 6 have categorically stated that the proposal for setting up a new retail outlet will be considered and sanctioned strictly in terms of the Norms prescribed by the Union of India. In the circumstances, the writ petition itself is premature since there is absolutely no cause of action as on to day for filing the writ petition.

Moreover, the Norms upon which the petitioner has placed reliance upon, are nothing but Administrative Instructions for guiding the discretion of the competent authority while granting permission for installation of retail outlets or service stations along Nation Highways. It is not in dispute that the said Norms had no statutory force. In the circumstances, even assuming that there is any infringement of the said guidelines, the petitioner cannot maintain a writ petition under Article 226 of the Constitution of India, since the law is well settled that the mere Administrative Instructions not having any statutory force which do not give rise to any legal right are not enforceable by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India { vide J.R.RAGHUPATHY Vs. STATE OF A.P. }

However, the learned Counsel for the petitioner has relied upon a decision of the Full Bench decision of this Court in S.K.C.C. BANK LIMITED, AMALAPURAM, REP. BY GENERAL MANAGER AND ANOTHER Vs. N.SEETHARAMA RAJU in support of his contention that the interference by this Court even on the ground of breach of guidelines is permissible since the respondent authorities who have prescribed the Norms are bound to follow the same in the interest of fairness.

I am not inclined to go into the issue whether the Norms in question are binding and whether the non-compliance with the same would invalidate the exercise of the discretion by the competent authority since as expressed above the Writ Petition itself is premature and liable to be dismissed on that ground alone.

Accordingly, the Writ Petition is dismissed. No costs.

_____

09th November, 2004.

Gbs

To

1 The Secretary, Union of India, Ministry of Petroleum and
Natural Gas of India, New Delhi.
2 The Secretary, Ministry of Road Transport and Highways, Transport

Bhavan-1, Parliament Street, New Delhi.
3 The Chief Secretary (P.W.D) (Roads), Govt. of A.P. Secretariat, Hyderabad.
4 The Chief Engineer (N.H), Erramanzil, Hyderabad.
5 The Superintending Engineer, N.H. Vijayanagaram, Vijayanagaram District.
6 The Executive Engineer, (R&B), N.H. Kakinada, East Godavari District.
7 The District Collector, West Godavari District, Collectorate, Eluru.
8 The General Manager, Reliance India Ltd, (Petroleum Business),
201, Lakshmi Towers, 2nd Floor, Rajbhavan Road Somajiguda,

Hyderabad-82.

9.2CD copies